

REMARKS

Claims 3, 7-11, 13, 15, 16 and 18 have been canceled, and claims 1, 2, 4-6, 12, 14, and 17 have been amended. In addition, new claims 19 and 20 have added in the present Amendment. Claims 1, 2, 4-6, 12, 14, 17, 19, and 20 are therefore currently pending in the present application.

The specification has been amended herein in order to add the scientific names of Tangkuei, Ligisticum, and Salvia root, namely Angelica sinensis, Ligusticum wallichii, and Salvia miltorrhiza. These scientific names have also been added to the claims. Support for this amendment can be found on pages 10 and 11 of the provisional application from which the present case claims priority, which was incorporated by reference into the present application. In addition, the specification has been amended to express the ratio of the herb materials present in an exemplary embodiment of the present patch in percentage terms as well as in terms of their masses (in milligrams). No new matter has been added to the present application by the foregoing amendments.

Claim 1 has been amended to recite a medication comprising a dried, water-soluble filtrate of the herbs listed in claim 3. Support for this description of such herbal materials can be found in Figure 5, which illustrates an extraction process for producing the claimed herbal medication. In this process, the herbs are first processed with water, after which a filtrate is collected and dried (see the right-hand process flow of Figure 5 following the “Filter” step). In view of this, this amendment adds no new matter to the present application.

In addition, a “self-stick material” has been recited in claim 1. Support for this is found in paragraph [0071] of the present application as published, which describes the present patch as having one side coated with a self-adhesive film. Support can also be found paragraph [0148], which specifically recites a self-stick material for use in connection with the present patch.

The remaining amendments to the claims have been made in order to conform them to the changes made to claim 1, or otherwise to clarify these claims. In view of the foregoing, the Applicant respectfully requests entry of this Amendment and consideration of the present application as amended herein.

Claim Objections

Claims 2 and 14 were objected to in view of informalities noted by the Examiner. These informalities have been corrected herein. In view of this, the Applicant respectfully requests that the objections to the claims be withdrawn.

Rejections under 35 U.S.C. §112, First Paragraph

Claims 3-6, 13, and 17 were rejected under 35 U.S.C. §112, first paragraph as containing subject matter not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors had possession of the claimed invention at the time the application was filed. In particular, the use of the term “extract” was objected to as failing to adequately describe the materials used in the present patch. In place of this term, the material used in the present patch has been described in claim 1 as a dried, water-soluble filtrate. Support for this description can be found, *inter alia*, in Figure 5, which illustrates a process for producing the herbal materials of the present patch that involves drying a filtrate of herbs that have been processed with water. In view of this, the Applicant respectfully submits that the materials recited in claim 1 comply with the requirements of 35 U.S.C. §112, first paragraph.

Claim 2 was also rejected as failing to comply with the written description requirement of 35 U.S.C. §112, first paragraph. Claim 2 recites a non-sticking protection layer releasably affixed to the patch of claim 1. As described above, the present application describes the patch of the invention as having one side coated with a self-adhesive film (paragraph [0071] of the published application) or other self-stick material (paragraph [0148]). Paragraph [0068] further describes a protection layer as being a “non-sticking layer” which is removed before applying the patch to a patient. One of skill in the art would understand from these disclosures that the recited protection layer, although adhered (i.e. affixed) to the adhesive surface of the patch (the adhesive film) in order to protect it from contamination, can be removed (released) in order to apply the patch to a patient. In view of this, the Applicant respectfully submits that claim 2, as amended herein, also complies with the requirements of 35 U.S.C. §112, first paragraph.

In view of the foregoing, the Applicant respectfully requests that the rejections under 35 U.S.C. §112, first paragraph be withdrawn.

Rejections under 35 U.S.C. §112, Second Paragraph

Claims 1, 3-6 and 17 were rejected under 35 U.S.C. §112, second paragraph as lacking clarity with regard to whether the claimed patch contains a medication. The claims have therefore been amended in order to clarify that the patch does comprise medication. In view of this, the Applicant respectfully requests that this rejection be withdrawn.

Rejections under 35 U.S.C. § 102(b)

Claims 1-6, 12-14, and 17 were rejected under 35 U.S.C. §102(b) as being anticipated by a website printout describing the OCULAX product. A copyright date of 2000 appears at the end of the printout, and this date is asserted as being reasonable evidence of the commercial availability of the OCULAX product more than one year before the priority application in this case was filed.

Submitted with the present Amendment is a Declaration of Jing Tang Liu, president of 3T Herbtech, Inc., which is the company that makes and sells the OCULAX product. Mr. Liu attests that this product was not on sale more than one year prior to the priority date of the present application. Mr. Liu further explains that the copyright date of 2000 refers to copyrightable elements of the web page, such as the product menu appearing at the top of the OCULAX website printout, which was created and used by 3T Herbtech, Inc. prior to the introduction of the OCULAX product and was used to market other products of 3T Herbtech, Inc. Such copyrightable elements of the website continued to be used by 3T Herbtech, Inc. following the introduction of the OCULAX patch. The Applicant respectfully points out that the product menu referenced by Mr. Liu and shown at the top of the OCULAX website printout does not list the OCULAX product.

In view of the foregoing, the Applicant respectfully submits that the evidence submitted herewith by the Applicant rebuts any prima facie showing of commercial availability asserted by the Patent Office, and that the OCULAX website printout does not therefore constitute prior art with respect to the present application. Claims 1-6, 12-14, and 17 thus are not anticipated by the OCULAX website printout, and the Applicant respectfully requests that the rejection of these claims under 35 U.S.C. §102(b) be withdrawn.

Rejection under 35 U.S.C. § 103(a)

Claim 1 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4858604 to Konishi. Konishi teaches an adhesive bandage comprising a pad for absorbing medicine. Konishi does not, however, teach or suggest that such a bandage can comprise a dried, water-soluble filtrate of each of *Ligusticum wallichii*, *Salvia miltorrhiza*, *Angelica sinensis*, and *chrysanthemum*, as recited in claim 1.

Even if the Konishi patent were found to suggest the use of such an herbal material in a patch, neither Konishi nor any other art of record suggests the unexpected results which have been found by the Applicant when such a patch is used to treat eye conditions. As disclosed in the Declaration of Liqin Sun under 37 CFR § 1.132 submitted herewith, the presently claimed patch has been shown to benefit myopia, presbyopia, and other eye conditions. This declaration describes clinical studies involving hundreds of patients who were treated with the presently claimed patch, and the data gathered in connection with these studies shows that the patch is remarkably effective in treating early stage myopia and pseudo-myopia. The patch also benefited the majority of patients with simple myopia who were treated (see Table 1). Improvements in presbyopic patients were also found (see Table 2).

The Applicant therefore respectfully submits that neither the Konishi patent nor any other art of record teaches or suggests the patch recited in claim 1, and that any prima facie showing of obviousness is overcome by the unexpected benefits that have been found by the Applicant in the treatment of eye conditions with the claimed patch. In

view of the foregoing, the Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. § 103(a) be withdrawn.

Conclusion

The Applicant believes that all pending claims, claims 1, 2, 4-6, 12, 14, 17, 19, and 20, are in condition for allowance, and a Notice of Allowance is respectfully requested. If, however, there remain any issues which can be addressed by telephone, the Examiner is encouraged to contact the undersigned at the telephone number listed below.

Please charge any fees due in connection with this Amendment or credit any overpayment to Deposit Account No. 19-2090.

Respectfully submitted,

SHELDON MAK ROSE & ANDERSON

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